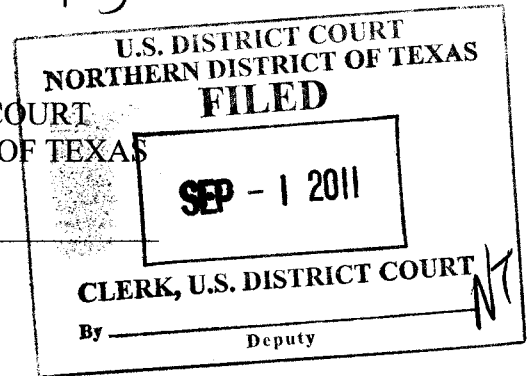


BK

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

CASE NO. \_\_\_\_\_



GERALD STONE,  
Plaintiff

v.

INTERNAL REVENUE SERVICE,  
Defendant

**8 - 11 CV 2263 - B**

PLAINTIFF'S ORIGINAL COMPLAINT AND  
REQUEST FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, GERALD STONE, hereinafter "Plaintiff" and files the following complaint, directed to the INTERNAL REVENUE SERVICE, hereinafter "Defendant", and for cause of action, would show the Court as follows:

- 1) This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, to order the production of agency records concerning documentation of evidence which Defendant has improperly withheld from Plaintiff.
- 2) This Court has jurisdiction over this action pursuant to 5 U.S.C. § 522(a)(4)(B), the Freedom of Information Act (FOIA), 28 U.S.C. § 2201, the Federal Declaratory Judgment Act, and 28 U.S.C. § 1331.
- 3) Plaintiff is a citizen of the United States.
- 4) Defendant Internal Revenue Service is an agency within the meaning of 5 U.S.C. § 552(f).

- 5) On December 28, 2010, Plaintiff made a FOIA request for the records and documentation of such records used by IRS agent Larry Clevenger, ID 75-16718, in his preparation for Notice of Proposed Adjustments sent to Plaintiff's CPA on October 6, 2006. A supplemental request was made on January 20, 2011.
- 6) On February 4, 2011, Disclosure Specialist Anna Marie Robles, ID 0227837, sent a letter to Plaintiff stating that they were unable to meet my request by the statutory time limit of twenty business days. Ms. Robles extended the response date to February 28, 2011.
- 7) On February 28, 2011, Disclosure Manager Jonathan K. Davis sent Plaintiff a letter, once again extending the response date.
- 8) On March 11, 2011, Disclosure Manager Davis sent Plaintiff 506 pages which he felt were responsive to Plaintiff's request and were not covered by any FOIA exemption. His cover later stated that this information covered both the December 28, 2010 FOIA request and the January 20, 2011 request.
- 9) On March 30, 2011, Plaintiff filed an appeal with the IRS Appeals Office stating that the documentation was non-responsive to the initial FOIA request.
- 10) On July 7, 2011, Plaintiff received a letter from Alexis Lindauer, Appeals Officer ID 0157545, stating that the IRS needed more time to respond to my appeal.
- 11) On July 19, 2011, Plaintiff received a letter from P. Perez, Appeals Team Manager, denying Plaintiff's appeal.
- 12) On July 25, 2011, Plaintiff wrote Ms. Lindauer requesting a reconsideration of the appeal.

13) On August 15, 2011, Plaintiff again wrote Ms. Lindauer with regard to Case F11007-0091, with specific allegations made by Mr. Clevenger that were not supported by documentation or evidence with the information sent to Plaintiff on March 11, 2011.

14) Copies of all documents referenced above are attached to this Complaint.

15) Plaintiff has a right of access to the requested information under 5 U.S.C. § 522(a)(3), and there is no legal basis for Defendant's denial of such access.

WHEREFORE, Plaintiff requests this Court:

- 1) Order Defendant to provide access to all documents that would be responsive to Plaintiff's initial FOIA requests
- 2) Award Plaintiff costs and reasonable attorney fees in this action, as provided in 5 U.S.C. § 522(a)(4)(E); and
- 3) Grant such other and further relief as it may deem just and proper.

ALTERNATIVELY, should Defendant not comply with Plaintiff's requests for documentation and evidence, Plaintiff requests a Declaratory Judgment of the following items:

- a) Plaintiff was never paid more for his repair work for Community Housing Fund (CHF) than was authorized by HUD in Housing Notice 94-74.
- b) Plaintiff never received any Excess Benefits as defined by IRS Code 4958.
- c) Plaintiff was never paid for any repair work for CHF that had been previously paid to another contractor.

- d) Plaintiff has never been subject to any IRS tax for fraudulent or illegal income.
- e) There is no documentation that supports that an American Arbitration Award of \$554,500 to Plaintiff was not for work done for CHF and therefore not owed to Plaintiff.
- f) Plaintiff was never paid more for his repair work than was authorized by HUD on every HUD-prepared HUD-1 closing statement.
- g) No internal bookkeeping at CHF was ever shown to any government agency, bank, mortgage lender, appraiser, or anyone else with the intent to cause them to do an action they otherwise would not have done.
- h) The IRS has never withheld the 501(c)(3) designation for CHF since it was formed in 1992 and received its permanent status in 1997, nor made any allegations of fraudulent behavior that would jeopardize such status.
- i) No IRS 990 has ever been filed with the IRS that has ever been held to be anything but truthful and accurate.
- j) There is no IRS regulation or requirement as to how a nonprofit does its internal bookkeeping, as long as the 990's are correct.

Should Defendant not comply with the request for documents and a Declaratory Judgment is issued, Plaintiff requests his costs, attorney fees, and any other relief the Court may deem just and proper.

Respectfully submitted this 1<sup>st</sup> day of September, 2011

Gerald Stone  
Gerald Stone

Internal Revenue Service  
Disclosure Scanning Operation  
Stop 39A  
2385 Chamblee Tucker Road  
Chamblee, GA 30341

December 28, 2010

I am making a request under the Freedom of Information Act.

On October 6, 2006, IRS Agent Larry Clevenger, ID: 75-16718, sent a Notice of Proposed Adjustments to my CPA, Chris Dellings, indicating a 4958(c) violation concerning excess benefits.

Section 4958(c) of the Code, in part, defines "excess benefits transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

The October 6, 2006 letter references many repair payments for houses whereby I, and or my company, Ranscott Construction, completed for Community Housing Fund. The letter states that a large amount of this repair work was not completed, but was paid for anyway, creating a crime and an excess benefit under Section 4958(c).

Since 4958(c) requires a payment to be made above the industry standard, I am requesting any information or documentation showing:

- 1) The industry standard used by Agent Clevenger to make his determination that there were excess benefits made to me for certain houses,
- 2) the addresses of houses that Agent Clevenger used to determine the industry standard was exceeded, and,
- 3) and, the amount that the payment to me exceeded the industry standard on the houses referenced in (2) above.

I am enclosing a copy of my driver's license with my picture on it. I am also willing to pay for any excess time for documentation required above the standard for individuals if it doesn't exceed \$50.00. Please let me know what the charges will be.

Thank you very much,

A handwritten signature in black ink, appearing to read 'G Stone', written over the typed name.

Gerald Stone

4645 O'Connor Ct.  
Irving, Texas 75062

cell: 469-576-9304  
fax: 972-717-1899



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[FAQs](#)

## Track & Confirm

### Search Results

Label/Receipt Number: **7010 1870 0002 8163 7579**

Expected Delivery Date: **January 3, 2011**

Class: **First-Class Mail®**

Service(s): **Certified Mail™**

Status: **Delivered**

Your item was delivered at 1:58 pm on January 03, 2011 in ATLANTA, GA 30341.

#### Detailed Results:

- **Delivered, January 03, 2011, 1:58 pm, ATLANTA, GA 30341**
- **Notice Left, January 03, 2011, 1:20 pm, ATLANTA, GA 30341**
- **Arrival at Unit, January 03, 2011, 1:07 pm, ATLANTA, GA 30341**
- **Acceptance, December 29, 2010, 1:13 pm, IRVING, TX 75039**

#### Notification Options

##### Track & Confirm by email

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**Track & Confirm**

Enter Label/Receipt Number.

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[NEPA/EO 12866/REG Data](#)

[FOIA](#)



Postal Inspection  
Protecting the Trust



Integrity Center  
Promoting Integrity



Ms. Anna Marie Robles  
IRS  
Disclosure Office 11  
1999 Broadway  
Mail Stop 7000  
Denver, Colorado 80202-3025

January 20, 2011

Ms. Robles:

I spoke with you on January 19, 2011 regarding my Freedom of Information Act request dated December 28, 2010.

In addition to the documents/information contained in the December 28, 2010 request, I am enclosing additional requests that pertain to the same issues. I am also enclosing copies of the pertinent documents from IRS to my CPA and myself.

Please include these additional requests along with the previous requests when replying to my FOIA requests.

You already have a copy of my driver's license and my agreement to pay for excess research.

Thank you very and can you give me some idea as to when I should expect your reply.



Gerald A. Stone  
4645 O'Connor Ct.  
Irving, Texas 75062

469-576-9304  
SS #469-52-3262

1) On the October 6, 2006 Notice of Proposed Adjustments sent from Agent Clevenger to CPA Chris Dellings, it shows that a \$544,500 payment from Community Housing Fund to Ranscott Construction was considered to be an excess benefit under 4958(c). Mr. Clevenger went on to itemize the breakdown of the money Gerald Stone was seeking in an arbitration award. I am requesting any documentation that shows what criteria was used to determine that the individual amounts requested by Mr. Stone were not legitimate.

2) On Form 886A, Explanation of Items, prepared by Mr. Clevenger, I am requesting documentation confirming the facts stated below:

a) Page 1, (2) states 'CHF paid Ranscott for rehab work not actually done in some cases, and for work that was completed by another party who had already received fair compensation for the work in numerous cases'.

I am specifically asking for any documentation that shows that Community Housing Fund paid another contractor for work done and then also paid Ranscott Construction for the same work.

b) On Page 2, it states that an arbitrator with the American Arbitration Association, Joel Levine, was interviewed by government agents and he said he felt misled because of the lack of knowledge of the relationship between Mr. Stone and Ms. Hildenbrand.

I am specifically asking for any documentation or notes regarding the interview with Mr. Levine. Also, what criteria did Mr. Clevenger use in determining how Mr. Levine made the award of \$544,500?

c) On Page 3, first paragraph, states 'Various false documents and representations were made by Hildenbrand and Stone to receive payment for rehab work done in Florida. Another contractor had coordinated all the rehabilitation work in Florida and was reimbursed for all expenses he incurred.'

I am requesting a copy of any of the false documents that Mr. Clevenger is referring to and to whom any false representations were made using those documents. I am also requesting copies of payments made to any other contractor in Florida by CHF.

- d) Page 7, Mr. Clevenger states 'Barbara Hildenbrand, with the aid of others of Community Housing Fund, was deliberately changing the books to reflect events that did not happen. To increase the costs of houses purchased from HUD so that they could be sold at an inflated price. This reporting of fictitious records to a government body is clearly contrary to public policy'.

I am requesting any evidence or documentation of any houses sold in excess of HUD regulations, a copy of any fictitious records that were reported to a government body and the name of that government body.

- e) In a document titled 'Intermediate Sanction Issues IRC 4958' it states that 'The retainer specifically stated that it was for Barbara Hildenbrand and Jerry Stone'.

I am requesting a copy the above reference document.

- f) In the above document, on Page 2, it states that a HUD audit for the years 1997 through 2001 found 'CHF was paying Ranscott for rehab work not done or was paying Ranscott again on rehab work that was previously paid in full'.

I am requesting documentation where the HUD audit made the above statement and the documentation supporting the statement.



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

**SMALL BUSINESS/SELF-EMPLOYED DIVISION**

February 4, 2011

Gerald Stone  
4645 O'Connor Ct  
Irving, Texas 75062

Dear Mr. Stone:

I am responding to your Freedom of Information Act (FOIA) request dated December 28, 2010 that we received on January 8, 2011.

We are unable to send the information you requested by February 4, 2011, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause. We have extended the response date to February 28, 2011 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or
- In the District of Columbia

You may file suit after February 4, 2011. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

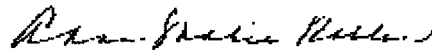
Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

2

If you have any questions please call Disclosure Specialist Anna Marie Robles, ID # 0227837, at 303-603-4802 or write to: Internal Revenue Service, Disclosure Scanning Operation, 4800 Buford Hwy - Mail Stop 93A, Chamblee, GA 39901-0093. Please refer to case number F11007-0091.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anna Marie Robles".

Anna Marie Robles  
Disclosure Specialist  
Disclosure Office 11



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

February 28, 2011

Gerald Stone  
4645 O'Connor Ct  
Irving, Texas 75062

Dear Mr. Stone:

I am responding to your Freedom of Information Act (FOIA) request dated December 28, 2010 that we received on January 8, 2011.

On February 4, 2011 I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the documents. I will contact you by March 24, 2011 if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Disclosure Specialist Anna Marie Robles, ID # 0227837, at 303-603-4802 or write to: Internal Revenue Service, Disclosure Scanning Operation, 4800 Buford Hwy - Mail Stop 93A, Chamblee, GA 39901-0093. Please refer to case number F11007-0091.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan K. Davis".

Jonathan K. Davis  
Disclosure Manager  
Disclosure Office 11



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 11, 2011

Gerald A. Stone  
4645 O'Connor Ct  
Irving, Texas 75062

Dear Mr. Stone:

I am responding to your Freedom of Information Act (FOIA) requests dated December 28, 2011 and January 20, 2011 that we received on January 6 and 20, 2011.

You asked for documentation used by Agent Clevenger regarding the industry standard used, the address of the houses used to make this determination, and the amount that the payment to you exceeded the industry standard on the houses referenced concerning Section 4958(c). Of the 529 pages located in response to your request, I am enclosing 506 pages. I am withholding 50 pages in part and 23 pages in full for the following reasons:

I am withholding 10 pages in part for the following reasons:

- I deleted the Discriminant Information Function (DIF) score from the enclosed records. Release of the DIF score would seriously impair IRS assessment, collection, and enforcement proceedings. FOIA exemption (b)(3), supported by Internal Revenue Code section 6103 (b)(2) and (e)(7) exempts this information from release. Disclosure of this information would also reveal law enforcement techniques, procedures and guidelines protected by FOIA exemption (b)(7)(E).

I am withholding 30 pages in part and 10 pages in full for the following per FOIA exemption (b)(3). The withheld portions are the tax information of other taxpayers. FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Internal Revenue Code section 6103(a).

I am withholding 10 pages in part and 11 pages in full for the following per FOIA-Exemption (b) (5). This portion of FOIA exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption:

- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

I am withholding 1 page in part and 2 pages in full for the following per FOIA-Exemption (b)(6). This portion of FOIA exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

In your subsequent request, you appear to be asking for documentation that may be included in records for Community Housing Fund.

Tax records are confidential and may not be disclosed unless specifically authorized by law. You must provide the written consent of an individual authorized to act on behalf of Community Housing Fund before we can consider releasing the records you requested.

The consent must be a separate written document pertaining solely to the authorized disclosure. It must include the following:

- Name, address and employer identification number of the corporation
- The type of return or return information to be disclosed
- The taxable period or year covered
- The identity of the person to whom the disclosure is to be made
- Signature of the authorized individual and date signed. You must ensure the individual has the legal authority to sign the authorization.



For your convenience, I have enclosed Form 8821, Tax Information Authorization. When properly completed, this form satisfies all requirements for a valid consent. The IRS must receive the consent within 120 days of the signature date.

The redacted portions of each page are marked by the applicable FOIA exemptions. This constitutes a partial denial of your request. I have enclosed Notice 393 explaining your appeal rights.

Our office has implemented a new imaging software that automatically prints pages that were denied in full and pages not responsive to your request. You can identify them by the marking "Denied in Full" and/or "Page Denied-Out of Scope." The enclosed records include 23 pages that were substituted for pages denied in full. We did not charge fees for any of these pages.

The fee for copying the released documents is \$81.20, (\$0.20 per page after an allowance of 100 pages at no charge). Please send your check or money order in the amount of \$81.20 payable to the Treasury of the United States to the address below. We must receive your payment by April 11, 2011. Fees paid are reimbursement for services performed and are not refundable. If you fail to pay the fees, your name will be added to the Freedom of Information Act Non-Payment list, and no future requests will be processed until all fees are paid in full.

If you have any questions please call Disclosure Specialist Anna Marie Robles, ID # 0227837, at 303-603-4802 or write to: Internal Revenue Service, Disclosure Scanning Operation, 4800 Buford Hwy - Mail Stop 93A, Chamblee, GA 39901-0093. Please refer to case number F11007-0091.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan K. Davis", with a large, stylized loop at the end.

Jonathan K. Davis  
Disclosure Manager  
Disclosure Office 11

Enclosures  
Responsive Documents  
Notice 393  
Form 8821

IRS Appeals  
Attention: FOIA Appeals  
M/Stop 55203  
5045 E. Butler Ave.  
Fresno, California 93727-5136

March 30, 2011

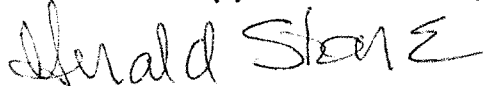
This is an appeal of a FOIA request. I have enclosed a copy of the request. The date of the requests were December 28, 2010 and January 20, 2011. I have also enclosed a copy of the response from the Department of the Treasury. I have also enclosed a signed IRS Form 8821 on both Barbara Hildenbrand and Community Housing Fund, releasing any information on either to me. This may include any of the redacted information I received from IRS. I have also enclosed a copy of the bill sent to me for the copying of the information and the money order paying that bill. The date of the IRS response letter was March 11, 2011.

I am appealing the response in that the material sent to me from the IRS in response to my request was non-responsive to the questions raised. They include, but are not limited to:

- 1) None of the information supplied indicated that the IRS had determined that I was a disqualified person under Section 4958 as stated by the IRS agent, Larry Clevenger, who issued the various reports;
- 2) The FOIA response did not show any evidence that Gerald Stone had received any payments for work by Community Housing Fund that had been previously paid to a different contractor as claimed by Mr. Clevenger;
- 3) The FOIA response did not show that the money received from an arbitration award was in excess of the amount of work provided to receive the payments and did not show how the final arbitration amount of \$544,500 was determined;
- 4) The FOIA response did not identify the purported federal program that was charged with having receiving federal funding;

- 5) The FOIA response did not contain evidence that was claimed in Mr. Clevenger's reports that stated "The retainer specifically stated that it was for Barbara Hildenbrand and Jerry Stone".
- 6) The FOIA request showed no evidence to substantiate that the Forms 870-E, 4720/4621, and 4883 prepared by Mr. Clevenger had any basis in fact.
- 7) The FOIA response did not contain any evidence of 'false documents and representations' made by Barbara Hildenbrand or Gerald Stone as indicated by Mr. Clevenger.
- 8) The FOIA response did not contain any evidence of Mr. Clevenger's claim that 'This reporting of fictitious records to a government body is clearly contrary to public policy'.

I am requesting in this appeal that the records supporting Mr. Clevenger's claims be sent to me. He must have the records or stipulate that none exist and the charges made in his reports were created without evidence. Should the response to this appeal be that he was working off another agency's records, he must state whose records he was using, where the records are located, and who his contact person was. An agent simply cannot write damaging reports on a person and then claim he has no records to support his claims, which is exactly what has happened here.



Gerald Stone  
4645 O'Connor Ct.  
Irving, Texas 75062

phone: 469-576-9304  
fax: 972-717-1899

**Department of the Treasury**

**Person to Contact:**

Alexis Lindauer  
Employee ID Number: 0157545  
Tel: 559-253-4805  
Fax: (559) 253-4890

**Refer Reply to:**

AP:FW:FRC:AGL

**In Re:**

Freedom of Information Act

**Tax Period(s) Ended:**

12/2011

Date: July 7, 2011

GERALD A STONE  
4645 O'CONNOR CT  
IRVING TX 75062

Gerald A Stone:

This letter is our acknowledgement that on July 5, 2011 we received your Freedom of Information Act (FOIA) administrative appeal, dated March 30, 2011. We are required to complete our consideration of your appeal within 20 business days after the date we receive your appeal. If we are unable to complete your case in that time frame, you may seek judicial review by properly filing suit in the United States District Court in the district where you live or work, where your records are located or in the District of Columbia. The rules for filing such suit are set forth in Federal Rule of Civil Procedure 4(i).

It may take several weeks to retrieve the pertinent documents from the Disclosure Office. We will then complete our review and notify you in writing of our decision and of any judicial remedies that may be available to you. We apologize for any delay in responding to your request.

If you decide to file suit with the Court while we are considering your case, please advise this office in writing of your action. Once notified, we will terminate our consideration of your FOIA appeal and transfer jurisdiction to the Court.

In the interim, if you have any questions concerning the status of your appeal, please contact the Appeals Officer whose name and telephone number are listed above.

Sincerely,



Alexis Lindauer  
Appeals Officer

**Internal Revenue Service**  
Appeals Office M/S 55203  
5045 E Butler Ave  
Fresno, CA 93727-5136

Date: **JUL 19 2011**

Gerald Stone  
4645 O'Connor Ct  
Irving, TX 75062

**Department of the Treasury**

**Person to Contact:**

Alexis Lindauer  
Employee ID Number: 157545  
Tel: (559) 253-4805  
Fax: (559) 253-4890

**Refer Reply to:**

AP:W:A10:T5:FSC

**In Re:**

Freedom of Information Act  
**Disclosure Case Number(s):**  
F11007-0091

Dear Gerald Stone,

This letter is in response to your appeals request dated 3/30/11 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of 3/11/2011 from the Disclosure Office of your request for information dated 12/28/2010.

You requested for copies of the following:

1. The industry standard used by Agent Clevenger to make his determination that there were excess benefits made to you for certain houses,
2. The addresses of houses that Agent Clevenger used to determine the industry standard was exceeded, and
3. The amount that the payment to you exceeded the industry standard on the houses referenced in (2) above.

The Denver Disclosure Office located 529 pages in response to your request and they released 506 pages in full. The Denver Disclosure Office withheld 50 pages in part and 23 pages in full. They notated the applicable FOIA exemption on the partially redacted documents and referenced the applicable FOIA exemption for the documents withheld in full in their response dated 3/11/11.

Your appeal states that you are appealing the response from the Disclosure Specialist as they were non-responsive to questions you raised.

We have reviewed the response of the Disclosure Officer as well as the Disclosure database and have determined that the response was appropriate. We are satisfied that a reasonable search for records was performed and that to the extent that the records existed at the time of your request, they were obtained, reviewed, and provided, if appropriate.

We cannot address your allegations that other documents exist. We can only address whether the search was reasonable. In regard to the adequacy of a search, an agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993). In this case, you requested the documents stated above and the Disclosure Specialist verified the documents being requested, during a phone call with you, also. The Disclosure Office obtained a copy of those files and provided you with the appropriate documents.

The basic question is not "whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate." Steinberg v. U.S. Dept. of Justice, 23 F.3d 548, 551 (D.C. Cir. 1994) (quoting Weisberg v. U.S. Dept. of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). In other words, "the search need only be reasonable, it does not have to be exhaustive." Miller, 779 F.2d at 1383 (citing Shaw v. U.S. Dept. of State, 559 F. Supp. 1053, 1057 (D.D.C. 1983)); see also, Boggs v. United States, 987 F. Supp. 11, 20 (D.D.C. 1997) (noting that the role of the court is to determine reasonableness of search, "not whether the fruits of the search met plaintiff's aspirations").

We believe that the Disclosure Office has met its burden in regard to the adequacy of the search. Your allegation that additional documents exist, to answer your specific questions, does not undermine the finding that a reasonable search was conducted.

The Disclosure Office does not speculate about what the contents of the file were either before or after the time of the request. Nor is it the responsibility of the Disclosure Office to determine what the contents of the file should have been or to pursue information that might have been contained therein at some other point in time. A search is conducted. Responsive documents are located and evaluated for their release. Nothing more and nothing less.

Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. We also ensure an adequate search for documents were performed.

The Disclosure Specialist properly responded to you, as FOIA does not require agencies to provide explanations or answers in response to questions. Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985); Hudgins v. IRS, 620 F. Supp. 19, 21 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987), cert. denied, 484 U.S. 803 (1987) ("FOIA created only a right to access to records, not a right to personal services"). In addition, the FOIA does not require agencies to create records in response to a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975).

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Perez', with a stylized flourish at the end.

P. Perez  
Appeals Team Manager

July 25, 2011

Alexis Lindauer  
Internal Revenue Service  
Appeals Office M/S55203  
5045 E. Butler Ave.  
Fresno, California 93727-5136

re: F11007-0091

Dear Ms. Lindauer:

I received a letter from P. Perez, Appeals Team Manager, regarding my FOIA appeal in the above referenced case. Needless to say, I am quite disappointed with the response.

In my initial FOIA request, and my subsequent appeal, I requested the information that Larry Clevenger, ID 75-16718, used to make numerous allegations against my wife and I starting with a TE/GE Exempt Organization Examination dated October 6, 2006 and continuing with other charges through the next few years. These allegations include multiple falsehoods of the most egregious types. We spent a significant amount of money for legal and accounting fees to refute Mr. Clevenger's reports. I am sure you are aware that the IRS Appeals Office cleared both my wife and I of all of Mr. Clevenger's allegations, save for one legal fee that we agreed to reclassify as income and pay the appropriate tax.

I am sure that you can appreciate my position that the IRS/Mr. Clevenger is withholding information. We have in our possession numerous documents that we received from Mr. Clevenger in years past that were not included in the documents sent to me, making your claim that I received everything in your possession somewhat dubious. However, in the interest of cooperation, I am again asking that the IRS supply all documents used by Mr. Clevenger in his preparation of his reports and charges.

Alternatively, in the interest of saving time and money, I will send to you a succinct list of specific documents that Mr. Clevenger must have had to make his reports. If you agree that those documents don't exist, or not in your possession, let's agree on the specific documents. This will save having to go into Federal Court and get a Declaratory Judgment. This



seems like a waste of everyone's time as you have already stated that you are not withholding any records.

Thank you and I look forward to your reply. Please respond by August 15, 2011. After that date, I will have no other option than to file suit in Federal Court.

A handwritten signature in black ink that reads "Gerald Stone". The signature is written in a cursive, slightly stylized font.

Gerald Stone  
4645 O'Connor Ct.  
Irving, Texas 75062

Telephone: 469-443-6343  
Fax: 972-717-1899

SS# 469-52-3262

Alexis Lindauer  
Internal Revenue Service  
Appeals Office M/S 55203  
5045 E. Butler Ave.  
Fresno, California 93727-5136

August 15, 2011

re: F11007-0091

Dear Ms. Lindauer:

I did not hear from you after sending you my letter dated July 25, 2011 regarding the information you supplied to me subsequent to my FOIA request dated December 28, 2010.

After carefully reviewing the information supplied to me in response to my FOIA, there are still substantial questions about the adequacy of the material.

A sampling of the items charged in Mr. Clevenger's reports and filings, but with no evidence supplied as to how he arrived at his assertions, are, but not limited to:

- 1) He states that on page 7 of his 886-A that Barbara Hildenbrand was 'deliberately changing the books to reflect events that did not happen', however he does not give an example of even one such occurrence. While Ms. Hildenbrand admitted (which was unknowing and inaccurate) raising the price of houses to low income people to cover up for her theft from CHF, the government admitted, before Mr. Clevenger's report, that there is no evidence that that ever happened. Therefore, how did Mr. Clevenger make that determination and where is documentation of his evidence?
- 2) He states on page 7 of his 886-A that 'Barbara Hildenbrand and Gerald Stone filed a false claim with the American Arbitration Association'. He supplies no evidence whatsoever as to what he used for facts to support that claim. Where is that documentation?

- 3) He states in his 886-A that Mr. Stone went to arbitration seeking at least \$2,481,880 for work he had done for Community Housing Fund and not been paid. Mr. Clevenger offers no explanation as to why this request was not proper and cites no HUD regulations that would not permit it. The amount of repairs needed to a HUD REO before it could have been sold was clearly disclosed in HN 94-74, which Mr. Clevenger makes no mention.
- 4) He states in a 4883 filing that Gerald Stone owed taxes and penalties for funds received from Community Housing Fund of \$264,375 and \$1,225,125 respectively for the years 2002 and 2003. I received no documentation how he made this determination, especially in light of the IRS Appeals Office subsequent ruling that the numbers in Mr. Clevenger's report were not accurate and were dismissed. The simple request under FOIA was for the documents that Mr. Clevenger used to make his determinations in the first place.
- 5) On page 1 of his INTERMEDIATE SANCTION ISSUES for IRS 4958, he states "The retainer specifically stated that it was for Barbara Hildenbrand and Gerald Stone". We are once again requesting a copy of that retainer letter as we don't believe it exists as Mr. Clevenger describes.
- 6) Section 4858(c) of the Code, as evidenced on Mr. Clevenger's 888-A, EXPLANATION OF ITEMS, defines 'excess benefit transaction' as a benefit that is paid that exceeds the value of the consideration of the goods and services provided. While Mr. Clevenger advocated for an 'excess benefit tax' under 4958(c) (which was subsequently denied), I received absolutely no information that would have supported his request in the first place. Without any documentation, it appears that Mr. Clevenger simply made up his report without any basis in fact.
- 7) There was simply no documentation supplied to me under my FOIA request that would support Mr. Clevenger's findings. Either that information exists or it doesn't. I am once again asking for the documents supporting Mr. Clevenger's various reports.

Please provide me with any further documents that you might have that would support Mr. Clevenger's various reports and findings. I made my initial request eight months ago and have never received any thing that supports the government findings.

A handwritten signature in black ink that reads "Gerald Stone". The signature is written in a cursive, slightly slanted style.

Gerald Stone  
4645 O'Connor Ct.  
Irving, Texas 75062

phone: 469-443-6343

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Gerald Stone, pro se

(b) County of Residence of First Listed Plaintiff Palm Beach County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

4645 OConnor Ct., Irving, TX 75062

469-443-6343

## DEFENDANTS

Internal Revenue Service

County of Residence of First Listed Defendant District of Columbia

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

3-11CV2263-B

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 3 Federal Question (U.S. Government Not a Party)

☒ 2 U.S. Government Defendant

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State

PTF DEF

☐ 1 ☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF

☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>SOCIAL SECURITY</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. 552

Brief description of cause:  
nonproduction of documents

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9-1-2011

SIGNATURE OF ATTORNEY OF RECORD

Gerald Stone

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE